



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

**VIA CERTIFIED MAIL - Article No. 7004 1350 0001 5668 3694**

Ref:8Enf-L

David A. Andresen  
4 Seasons Cooperative  
520 Vander Horck Ave.  
Britton, SD 57430

OCT - 4 2005

*Re: In the Matter of: 4 Season's Cooperative*

Dear Mr. Andersen:

Enclosed is a Penalty Complaint and Notice of Opportunity for Hearing seeking penalties for violations of the Federal Insecticide Fungicide and Rodenticide Act, ("FIFRA"), 7 U.S.C. §§ 136 to 136y. In 2005, 4 Season's did not file its yearly pesticide production report for its pesticide producing establishment located in Red Field, South Dakota. This Complaint has been filed because of those violations.

If you or a representative would like to discuss the complaint or any of the other documents enclosed in this letter, please call me at 303-312-6924.

Sincerely,

Eduardo Quintana,  
Enforcement Attorney

Enclosures:

1. Complaint
2. CROP
3. FIFRA ERP
4. FIFRA ERP for Pesticide Producing Establishment Reporting Requirement
4. SBREFA Information Sheet

cc. Carlyle Richards (w/ enclosures), Esq.  
Tim Osag (w/o enclosures), 8Enf-T



Printed on Recycled Paper

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII**

2005 OCT -5 AM 8:45

Docket No. **FIFRA-08-2006-0001**

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter Of: )

4 Seasons Cooperative )  
EPA Est. No. 056902-SD-001 )  
25 East 6<sup>th</sup> Avenue )  
Red Field, SD, )

Respondent. )

**PENALTY COMPLAINT AND NOTICE  
OF OPPORTUNITY FOR HEARING**

**INTRODUCTION (JURISDICTION)**

1. This civil administrative enforcement action is authorized by Congress in section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). 7 U.S.C. section 136l(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.
2. The undersigned EPA officials have been properly delegated the authority to issue this action.
3. EPA alleges that Respondent has violated FIFRA, by failing to submit an annual pesticide production report, as more fully explained below. FIFRA authorizes the assessment of a civil penalty for violations of the Act. 7 U.S.C. section 136l(a).

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.
5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (999 18<sup>th</sup> St; Suite 300; Denver, Colorado 80202) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in

your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

### **QUICK RESOLUTION**

6. Respondent may resolve this proceeding at any time by paying the specific penalty (\$6,500) proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

U. S. EPA, Region 8  
(Regional Hearing Clerk)  
Mellon Bank  
P. O. Box 360859M  
Pittsburgh, PA 15251

### **SETTLEMENT NEGOTIATIONS**

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Eduardo Quintana at 1-800-227-8917; extension 6924 or the address below. *Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.*

### **ALLEGATIONS**

The following general allegations apply to each count of this complaint:

8. EPA has jurisdiction over this matter pursuant to section 14(a)(1) of FIFRA, 7 U.S.C. section 136l(a)(1).
9. Respondent, 4 Seasons Cooperative, is a "person" within the meaning of section 2(s) of FIFRA, 7 U.S.C. section 136(s), and is therefore subject to regulation.
10. Respondent operates a pesticide producing establishment ("the Establishment") at 25 East 6<sup>th</sup> Avenue, Redfield, South Dakota.

11. Respondent is incorporated in the State of South Dakota.
12. Respondent entered into a unification agreement with Farmers Union Oil Company of Redfield and Doland and currently operates the Establishment.
13. The unification agreement came into effect on or about January, 2005.
14. All pesticide production responsibilities, including but not limited to, Farmers Union Oil Company of Redfield and Doland's responsibility to report pesticide production, was transferred to Respondent on or about January, 2005.
15. During 2004, Respondent, by and through its predecessor, Farmers Union Oil Company of Redfield and Doland, produced pesticides at the Establishment.
16. Respondent is currently producing pesticides at the Establishment.
17. FIFRA section 2(w), 7 U.S.C. section 136(w), defines "producer" to be "...the person who manufacturers, prepares, compounds, propagates or processes any pesticide or device or active ingredient."
18. "Produce" is defined in 40 C.F.R. section 167.3 as "to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device."
19. "Pesticide" is defined in 40 C.F.R. section 152.3(s) as "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant[...]"
20. Respondent is a registered pesticide producer as defined by section 2(w) of FIFRA.
21. FIFRA section 7(c)(1), 7 U.S.C. section 136e(c)(1), requires all registered pesticide producers to file an annual report "...of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides...." Further, regulations promulgated pursuant to FIFRA section 7 require such annual report to be filed on or before March 1 for the preceding calendar year. 40 C.F.R. section 167.85(d).
22. FIFRA section 12(a)(2)(L), 7 U.S.C. section 136j(a)(2)(L), provides, "it shall be unlawful for any person-- who is a producer to violate any of the provisions of section 136e [FIFRA section 7] of this title."

23. Respondent produced pesticides subject to the FIFRA section 7, 7 U.S.C. section 136e, annual pesticide production reporting requirements at the Establishment.
24. Respondent failed to file a 2004 annual pesticide production report for the pesticides produced at its Establishment by Respondent or any of its predecessor entities.
25. The Respondent, therefore, having failed to file an annual pesticide production report for 2004 on or before March 1, 2005, has violated section 12(a)(2)(L) of FIFRA, 7 U.S.C. section 136j(a)(2)(L).

### **PROPOSED CIVIL PENALTY**

FIFRA authorizes the assessment of a civil penalty of up to \$6,500 for each offense of the Act. FIFRA requires EPA to consider the appropriateness of the penalty to the size of the business, the effect on the person's ability to continue in business, and the gravity of the violation. EPA has established Agency policies that provide a rational and consistent method for applying statutory factors to the circumstances of specific cases. A narrative description of the reasoning behind the penalty proposed in this case is attached to this complaint (Complainant's Exhibit 1), along with copies of the EPA policies. For the FIFRA violation alleged in this complaint, EPA proposes a penalty of \$6,500.

### **NOTICE OF RESERVATION**

EPA reserves the right to file any and all actions against any predecessor entity to assure itself of assessing a penalty for the FIFRA violation alleged in this Complaint.

### **COMPLIANCE ASSISTANCE**

Except for FIFRA section 13, 7 U.S.C. section 136k (Stop Sale, Use, Removal, and Seizure), FIFRA does not authorize the issuance of orders. In light of several assertions made by Respondent, Complainant hereby advises Respondent to take the following actions to come into compliance with FIFRA:

- A. Regulations promulgated pursuant to FIFRA section 7 require that if changes in the information submitted in an application for registration of a pesticide production establishment occur, such as the name of the company or the type of ownership, then EPA shall be notified within 30 days after the change occurs. 40 C.F.R. section 167.20(d) and (e). Respondent has merged with one or more pesticide producing establishments and is using the predecessor entity's EPA pesticide production registration number. Therefore, Respondent must submit to the EPA, in writing and on Respondent's letterhead stationary, notification of the name change and any other changes of the information specified in 40 C.F.R. section 167.20(d) for any pesticide producing establishment that Respondent

currently operates that uses a EPA pesticide production registration number registered under the predecessor entity's name.

- B. Regulations promulgated pursuant to FIFRA section 7 require, among other requirements, that the annual pesticide production reports shall include the name and address of the establishment, the amount of each pesticidal product produced, and sold or distributed during the past year. 40 C.F.R. section 167.85(b). If Respondent has submitted any annual pesticide production report that includes pesticide production information relating to pesticides produced at establishments other than the one specified in the report, Respondent must correct its report(s). Each annual pesticide production report corresponds to an individual pesticide producing establishment, as denoted by its own unique EPA registration number. Respondent should re-submit any annual pesticide reports where it reported pesticide production information of other establishments not denoted in the submitted annual report. The re-submitted annual reports must only include the pesticide produced at the particular establishment identified in the "name" section of the annual pesticide report. An annual report is required for each of pesticide producing establishment that Respondent operates.

To discuss settlement or ask any questions you may have about this process, please contact Eduardo Quintana, Enforcement Attorney, at 303-312-6924 or 1-800-227-8917 (ext. 6924), or at the address below.

United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice, Complainant  
999 18<sup>th</sup> Street, Suite 300 (ENF-L)  
Denver, CO 80202

Date: 10/3/05

By: Elisabeth Evans  
Elisabeth Evans, Director  
Technical Enforcement Program

Date: 10/3/05

By: Michael T. Risner  
Michael T. Risner, Director  
David J. Janik, Supervisory Enforcement Attorney  
Legal Enforcement Program

Date: 10/3/2005

By: Eduardo Quintana  
Eduardo Quintana, Enforcement Attorney  
Legal Enforcement Program

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits were hand-carried to the Regional Hearing Clerk, EPA Region VIII, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail (Article No. 7004 1350 0001 5668 3694) to:

David A. Andresen  
4 Seasons Cooperative  
520 Vander Horck Ave.  
Britton, SD 57430

and a courtesy copy was sent to:

Mr. Carlyle E. Richards,  
Richards Oliver, Attorneys at Law  
415 S. Main Street, Suite 222  
P.O. Box 114  
Aberdeen, SD 57402-0114

10/5/05  
Date

Judith M. McTernan



FIFRA SECTION 7(c) PENALTY NARRATIVE  
4 Seasons Cooperative (4 Seasons Coop), Redfield, SD  
(EPA Est. No. 056902-SD-001)

1. To ensure uniform and consistent enforcement response and application of the statutory penalty criteria in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA developed the 1986 FIFRA Section 7(c) Enforcement Response Policy (1986 Policy) and the July 2, 1990 Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (1990 Policy). The 1986 Policy continues to be used to determine the appropriate enforcement response for a violation of FIFRA Section 7(c) but was superseded by the 1990 Policy when it comes to calculating the actual civil penalty, i.e., the penalty amounts are calculated using the five-step approach identified in the 1990 Policy.

2. According to the 1986 Policy, the appropriate enforcement response for a failure to file (or notably late filing) of the annual production report required by FIFRA 7(c) is a civil penalty. 4 Seasons Coop is charged with violating FIFRA Section 7 (c) by failing to file an annual pesticide production report for 2004 for the Redfield establishment.

3. FIFRA Section 14(a) (4) requires that EPA "consider the appropriateness of [a civil penalty] to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation." EPA achieves these goals through the consistent application of the 1986 and 1990 Policies.

4. Following the guidance in the 1990 Policy, EPA calculates a proposed civil penalty using the following procedure. First, the gravity of the offense is identified using Appendix A of the 1990 Policy. Appendix A identifies a violation of FIFRA Section 7(c) as gravity level 2.

5. Second, according to the 1990 Policy, EPA determined the size of business category for the respondent. The penalty for 4 Seasons Coop has been calculated using the Category I size of business (gross revenues greater than \$1,000,000) with the understanding that this proposed penalty would be recalculated if information became available that shows this assumption to be incorrect.

6. Third, EPA used the above gravity and size of business components and the Civil Penalty Matrix for FIFRA Section 14 (a) (1) Violations on page 19 of the 1990 Policy to determine the dollar amount of the proposed penalty. Violations with gravity level 2 and in Business Category I are assessed a penalty of \$6,500 for each violation. [The penalty amounts shown in the 1990 Civil Penalty Matrix were increased by 10% effective January 31, 1997 and again by 17.23% effective March 15, 2004 pursuant to the Debt Collection Improvement Act of 1996].

7. The Penalty Policy then directs that the actual circumstances of the violation be considered using gravity adjustments criteria listed in Appendix B of that document. The penalty amount determined from the matrix and can be adjusted either upward or downward depending on the specific facts of the case known to EPA at the time of the calculation of the penalty.

However, in this case, no adjustments were made since 1990 Policy indicates that the gravity of record keeping and reporting violations are already considered in the dollar amount presented in the FIFRA and penalty matrix and that no further adjustments should be made.

8. Finally, EPA attempts to take into consideration what effect the calculated penalty would have on the ability of 4 Seasons Coop to continue to operate. However, based on the limited financial data available, no adjustment to the proposed penalty was considered warranted at this time. Adjustments of the proposed penalty can be made at a later date should information warranting such change become available.

9. In summary, EPA arrived at a penalty of \$6,500 for this violation of FIFRA Section 7(c) by considering all the FIFRA Section 14(a) (4) penalty criteria through the use of the 1990 Policy.

JN J5-8

Prepared by: Tim Osag Date: 8/25/05

**RESPONDENT:**

4 Seasons Cooperative (056902-SD-001)

**Address:**

25 6<sup>th</sup> Avenue  
Redfield, SD 57469

**Docket Number:**

**Prepared by:**

Tim Osag

*Tim Osag*

**Date:**

08/25/05

Appendix A	Count 1	Count 2	Count 3
1. Statutory Violation	12(a)(2)(L)		
2. FTTS Code	2BB		
3. Violation Level	2		
<b>Table 2</b>			
4. Violator Category §14(a)(1) or §14(a)(2)	14(a)(1)		
5. Size of Business Category	I		
6. Base Penalty (Table 1)	\$6,500		
<b>Appendix B</b>	NA		
7. Gravity Adjustments			
a. Pesticide Toxicity			
b. Human Harm			
c. Environmental Harm			
d. Compliance History			
e. Culpability			
Total Gravity (Add 7a-7e)	0		
<b>Table 3</b>			
g. Percent Adjustment			
h. Dollar Adjustment	\$0		
8. Final Penalty (6 - 7h)	\$6,500		
<b>9. Combined Total Penalty</b>	\$6,500		



# Code of Federal Regulations

40

Parts 1 to 49

Revised as of July 1, 2004

## Protection of Environment

### PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REV- OCATION/TERMINATION OR SUS- PENSION OF PERMITS

#### Subpart A—General

##### Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environ-  
mental Appeals Board, Regional Judicial  
Officer and Presiding Officer; disquali-  
fication, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed  
documents; business confidentiality  
claims.
- 22.6 Filing and service of rulings, orders and  
decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

#### Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

#### Subpart C—Protecting Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quota resolution; settlement; alter-  
native dispute resolution.
- 22.19 Prehearing information exchange; pre-  
hearing conference; other discovery.
- 22.20 Accelerated decision; decision to dis-  
miss.

*First Page May*

*addendum to 7-1-2004 Part 22*

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**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR PART 22**

**[FRL-7855-6]**

**Clarification of Address for Documents  
Filed With EPA's Environmental  
Appeals Board**

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Final rule.

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**SUMMARY:** EPA is amending the regulations that pertain to filing appeals and other documents with the Environmental Appeals Board (EAB) under the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP). Specifically, EPA is amending two regulations that specify the addresses where notices of appeal, accompanying briefs, and other documents must be filed, to provide that any filings made through the U.S. mail service must be addressed to the EAB's mailing address, and that any filings made by hand-delivery or courier must be made to the EAB's hand-delivery address. The amendments are intended to make the regulations consistent with current Agency practice and to provide clear guidance on the proper address to use under various circumstances.

**EFFECTIVE DATE:** This final rule is effective on December 28, 2004.

**FOR FURTHER INFORMATION CONTACT:**  
Eurika Durr, Clerk of the Board.  
Telephone number: (202) 233-0122. E-mail: [Durr.Eurika@epa.gov](mailto:Durr.Eurika@epa.gov).

**SUPPLEMENTARY INFORMATION:** This action is directed to the public in

general and to anyone who may want to file documents with the EAB. If you have questions regarding the applicability of this action to a particular entity or action, consult the person listed under FOR FURTHER INFORMATION CONTACT.

## I. Background

### A. What Action Is the Agency Taking?

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP), 40 CFR part 22, govern the filing of certain appeals with the EAB, and provide, in pertinent part, that:

[A]ny party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board (Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries may be made at Suite 600, 1341 G Street, NW.

40 CFR 22.30(a)(1). The regulation could be read as implying that hand deliveries may be made at either of the two specified addresses. However, the address referenced in the regulation as "1200 Pennsylvania Avenue, NW." is that of the EPA mailing center, which no longer accepts hand deliveries of mail addressed to the EAB. The EPA mailing center will reject any document addressed to the EAB that is delivered by hand or courier, and such document will not be properly filed until it has been re-delivered to the physical offices of the EAB at Suite 600, 1341 G Street, NW., Washington, DC 20005. The purpose of the amendment is to delete the regulatory language at 40 CFR 22.30(a)(1) quoted above, and to replace it with the following language:

[A]ny party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. Appeals filed through the U.S. Postal Service (except by U.S. Postal Express Mail) shall be addressed to the Environmental Appeals Board at its official mailing address: Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Appeals delivered by hand or courier (including deliveries by U.S. Postal Express Mail or by a commercial delivery service) shall be delivered to Suite 600, 1341 G Street, NW., Washington, DC 20005.

The CROP further provides, in pertinent part, that:

The original and one copy of each document intended to be part of the record

shall be filed \* \* \* with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk.

40 CFR 22.5(a)(1). According to 40 CFR 22.3, the Clerk of the Board "means the Clerk of the Environmental Appeals Board, Mail Code 1103B, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460." The purpose of the amendment is to amend 40 CFR 22.5(a)(1) by adding the following sentence after the regulatory language quoted above:

Documents filed in proceedings before the Environmental Appeals Board shall either be sent by U.S. mail (except by U.S. Express Mail) to the official mailing address of the Clerk of the Board set forth at 22.3 or delivered by hand or courier (including deliveries by U.S. Postal Express or by a commercial delivery service) to Suite 600, 1341 G Street, NW., Washington, DC 20005.

### B. How Can I Get Additional Information About This Action?

You may obtain additional information about this action on the EAB's Internet home page at <http://www.epa.gov/eab>.

### C. What Is the Agency's Authority for Taking This Action?

EPA is issuing this document under its general rulemaking authority. Reorganization Plan No. 3 of 1970 (5 U.S.C. app.). In addition, section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that this amendment is technical and non-substantive, and therefore, that there is good cause under 5 U.S.C. 553(b)(B) for making this rule final without prior proposal and opportunity for comment. EPA also finds good cause under 5 U.S.C. 553(d) to make this rule effective on the date of publication.

## II. Do Any of the Regulatory Assessment Requirements Apply to This Action?

No. This final rule implements a technical amendment to 40 CFR part 22 to provide clear guidance on the hand-delivery address for filings with the EAB, and does not otherwise impose or amend any requirements. This action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866, entitled

Regulatory Planning and Review (58 FR 51735, October 4, 1993). This rule does not contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, this action is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (UMRA) (Public Law 104-94). In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the UMRA of 1995. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999). Similarly, this rule will not have substantial direct effects on tribal governments, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). This rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

## III. Will EPA Submit This Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, generally provides that, before a rule may take effect, the agency that promulgates the rule must submit a rule report, which includes a copy of the rule, to each

House of the Congress and to the Comptroller General of the United States. CRA section 808 provides that the issuing agency may make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. EPA has made such a good cause finding, including the reasons therefor, and has established the date of publication as the effective date. As stated previously, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States, prior to publication of the rule in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 22

Environmental protection,  
Administrative practice and procedure,  
Courts.

Dated: December 20, 2004.

Richard McKeown,  
Chief of Staff.

- 40 CFR Part 22 is amended as follows:
- 1. The authority citation for part 22 continues to read as follows:

Authority: 7 U.S.C. 136(l); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g-3(g), 6912, 6925, 6928, 6991e and 6992d, 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

- 2. Section 22.5 is amended by adding a sentence after the second sentence in paragraph (a)(1) to read as follows:

§ 22.5 Filing, service, and form of all filed documents, business confidentiality claims.

(a) \* \* \*

(1) \* \* \* Documents filed in proceedings before the Environmental Appeals Board shall either be sent by U.S. mail (except by U.S. Express Mail) to the official mailing address of the Clerk of the Board set forth at § 22.3 or delivered by hand or courier (including deliveries by U.S. Postal Express or by a commercial delivery service) to Suite 600, 1341 G Street, NW., Washington, DC 20005. \* \* \*

- 3. Section 22.30 is amended by removing the first two sentences of paragraph (a)(1) and adding three new sentences in their place to read as follows:

§ 22.30 Appeal from or review of initial decision.

(a) \* \* \*

(1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. Appeals sent by U.S. mail (except by U.S. Postal Express Mail) shall be addressed to the Environmental Appeals Board at its official mailing address: Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Appeals delivered by hand or courier (including deliveries by U.S. Postal Express Mail or by a commercial delivery service) shall be delivered to Suite 600, 1341 G Street, NW., Washington, DC 20005. \* \* \*

[FR Doc. 04-28359 Filed 12-27-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2004-DC-0003; FRL-7853-9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Excess Volatile Organic Compound and Nitrogen Oxides Emissions Fee Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the District of Columbia (District) State Implementation Plan (SIP) for ozone. The rule requires major stationary sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in the District, which is part of the Metropolitan Washington DC Severe Ozone Nonattainment Area, to pay a fee to the District if the area fails to attain the one-hour national ambient air quality standard for ozone by November 15, 2005. The fee must be paid beginning in 2006, and in each calendar year thereafter, until the area is redesignated to attainment for the pollutant ozone. The District of Columbia submitted this rule on April 16, 2004, pursuant to the requirements of Section 110 of the Clean Air Act.

**DATES:** This rule is effective on February 28, 2005, without further notice, unless EPA receives adverse written comment by January 27, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the

Federal Register and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2004-DC-0003 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Web site: <http://www.docket.epa.gov/rmepub/RME>, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).  
D. Mail: R03-OAR-2004-DC-0003, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R03-OAR-2004-DC-0003. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://regulations.gov) Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your

*First Page only*

**ENFORCEMENT RESPONSE POLICY  
FOR THE  
FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)**

**Office of Compliance Monitoring  
Office of Pesticides and Toxic Substances  
U.S. Environmental Protection Agency**

**July 2, 1990**



*First Page only.*

**ENFORCEMENT RESPONSE POLICY FOR  
FIFRA SECTION 7(c) PESTICIDE PRODUCING  
ESTABLISHMENT REPORTING REQUIREMENT**

**Environmental Protection Agency  
Office of Pesticides and Toxic Substances  
Office of Compliance Monitoring  
Washington, D.C. 20460**



## U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

### Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

**The National Environmental Compliance Assistance Clearinghouse** provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

**Pollution Prevention Clearinghouse**  
<http://www.epa.gov/opptintr/library/ppicindex.htm>

**EPA's Small Business Ombudsman Hotline** can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:  
(800) 368-5888

**Emergency Planning and Community Right-To-Know Act**  
(800) 424-9346

**National Response Center** (to report oil and hazardous substance spills)  
(800) 424-8802

**Toxics Substances and Asbestos Information**  
(202) 554-1404

**Safe Drinking Water**  
(800) 426-4791

**Stratospheric Ozone and Refrigerants Information**  
(800) 296-1996

**Clean Air Technology Center**  
(919) 541-0800

**Wetlands Helpline**  
(800) 832-7828

### EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

**EPA's Home Page**  
<http://www.epa.gov>

**Small Business Assistance Program**  
<http://www.epa.gov/ttn/sbap>

**Office of Enforcement and Compliance Assurance**  
<http://www.epa.gov/compliance>

**Compliance Assistance Home Page**  
<http://www.epa.gov/compliance/assistance>

**Office of Regulatory Enforcement**  
<http://www.epa.gov/compliance/civil/index.html>

**Office of Site Remediation Enforcement**  
<http://www.epa.gov/compliance/cleanup>

**Innovative Programs for Environmental Performance**  
<http://www.epa.gov/partners>

**Small Business Ombudsman**  
[www.sba.gov/ombudsman](http://www.sba.gov/ombudsman)

